IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 538 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANSUYABEN RATILAL BHUVA

Versus

PARVATIBEN ANANDBHAI BHUVA

Appearance:

MS SM AHUJA for Petitioner

MR AR THACKER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/06/2001

ORAL JUDGEMENT

Heard Ms. S.M.Ahuja learned advocate for the petitioner.

Rule. Mr. A.R.Thakkar learned advocate waives

service of rule on behalf of respondent nos.1,2 and 3.

3. The petitioner - original plaintiff has filed the suit for perpetual injunction restraining the respondents - original defendants from causing obstruction in using the passage of the disputed road leading from his property to the Garnala road as per the sketch produced with the plaint. The petitioner / plaintiff has also prayed injunction restraining the respondents / defendants from taking water from well situated in property bearing Survey No. 171/4.

At the time of filing the suit, the petitioner / plaintiff applied for appointment of Court Commissioner to inspect the suit site and prepare a Panchanama along with the Map and to produce the same on record. It appears from the record that respondents / defendants disputed the Panchnama prepared by the Court Commissioner and during the arguments of Exh.5, moved an application Exh.32 for appointment of a fresh Court Commissioner to inspect the suite site again and to prepare a fresh inspection note with Map so as to show the alternate road available to the petitioner / plaintiff to enter into the property of the petitioner / plaintiff from the main road. That the Trial Court after hearing the parties vide its impugned order granted application and appointed the Court Commissioner and directed the Court Commissioner to inspect the suit site and submit the report on or before 3.6.2000. The petitioner / plaintiff moved an application requesting the Court to stay the operation of the order so as to permit the petitioner / plaintiff to approach to the Higher Forum and as such, the Trial Court has stayed the implementation of the order. The petitioner / plaintiff has challenged the order in the present revision application.

4. On behalf of petitioner learned advocate Ms. S.M.Ahuja has vehemently urged that respondents / defendants desire to create defence by showing alternate road and thereby, have prayed for a appointment of fresh Court Commissioner to inspect the suit site and, therefore, the order passed by the Trial Court is erroneous and deserves to be quashed and set aside. Mr. A.R.Tahkkar learned advocate having appeared in response to notice issued vide earlier order has supported the order.

5. It would be pertinent to note that while appointing the Court Commissioner for the first time, the Trial Court has acted on the averments of the plaint and injunction application; wherein the petitioner /

plaintiff has pleaded that no other alternative road for entry into the suit property and to fetch the water from the well situated in the property bearing Survey No. 171/4 is existing. But when the written statement is filed, the plea has been raised by the respondents / defendants that as there is a alternate way available to the petitioenr / plaintiff for entry into the disputed property and to reach to the well, the petitioner/plaintiff is not entitled to easement by way of necessity. That Trial Court having considered the said defence at the time of hearing of the application Exh.5 appears to have decided application Exh.32 with specific direction to the Court Commissioner to inspect the suit site and make note in respect to alternate road leading to the disputed property of the petitioner / plaintiff it is in existence.

6. In the above said view of the matter, it could not be said that Trial Court has erred while passing the impugned order and that impugned order is likely to cause irreparable loss to the petitioner / plaintiff because on inspection and preparation of Panchanama by the Court Commissioner as per the impugned order, the petitioner / plaintiff would get a right to file rejoinder and the Court could decide the disputed question of fact by considering the Panchanama prepared by Court Commissioner in respect to availability of alternate road to the disputed property if at all is in existence.

7. On the basis of foregoing discussion, as no jurisdictional error in the impugned order is shown and no failure of justice occurred, it would not be just and proper to interfere with the impugned order in exercise of revisional powers. As a result, petition fails and stands disposed of as rejected with no order as to costs. Rule is discharged. It is clarified that stay of operation of the impugned order granted by the Trial Court stands vacated.

(A.K.Trivedi,J.)

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